STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR BOUIER, D.O.,

Plaintiff/Garnishee Plaintiff-Appellee,

v

RAMSEY DASS, M.D. and RENAISSANCE HOSPITAL,

Defendants,

and

CHASS MIDTOWN HEALTH CENTER, INC.,

Garnishee Defendant-Appellant.

UNPUBLISHED
January 24, 2006

No. 256288
Wayne Circuit Court
LC No. 99-924747-CK

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

This garnishment appeal arises from plaintiff Arthur Bouier's attempt to obtain salary owed to him by defendants Dr. Ramsey Dass[1] and Renaissance Hospital. In January 2002, on the basis of Renaissance Hospital's failure to appear for a settlement conference, plaintiff obtained a default judgment against the hospital in the amount of unpaid salary ($80,000), plus interest. After plaintiff failed to collect any portion of the judgment from Renaissance Hospital, which the parties characterized as "defunct," plaintiff commenced garnishment proceedings against various entities, including garnishee defendant Chass Midtown Health Center, Inc. (CMHC). In light of CMHC's concession that it untimely responded to plaintiff's writ of garnishment, in May 2004 the circuit court entered a corrected default judgment against CMHC in the amount of $103,768.81.[2] CMHC appeals as of right, challenging entry of the corrected

[1] In April 2001, Dr. Dass was dismissed from the action pursuant to the parties' stipulation, and he is not a party to this appeal.

[2] The initial default judgment entered in March 2004 had incorrectly identified CMHC as
(continued…)

default judgment and the circuit court's denial of CMHC's motion for rehearing seeking to set aside the default judgment. We reverse and remand.

CMHC contends that because it proffered in its motion for rehearing both a good cause and a meritorious defense, the circuit court was obligated to set aside the default judgment. "Although the law favors a determination of a claim on the basis of its merits, the policy of this state is generally against setting aside defaults and default judgments that have been properly entered." *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). This Court reviews for an abuse of discretion a trial court's decision whether to enter or set aside a default judgment. *Sturak v Ozomaro*, 238 Mich App 549, 569; 606 NW2d 411 (1999). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

To the extent that the default judgment issue involves questions of court rule interpretation, this Court considers such questions of law de novo. *ISB Sales Co*, *supra*.

Postjudgment garnishment proceedings are governed by court rule, specifically MCR 3.101. Pursuant to MCR 3.101(D), plaintiff commenced this garnishment action by filing on December 3, 2003, a verified "Request and writ for garnishment" naming CMHC as the garnishee defendant allegedly "indebted or obligated to [Renaissance Hospital] for periodic payments." Consequently, the court rule required CMHC to "mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure [of CMHC's potential indebtedness to Renaissance Hospital] within 14 days after being served with the writ." MCR 3.101(H). Because CMHC filed its disclosure on February 18, 2004, more than ten weeks after receiving the writ for garnishment, MCR 3.101(S)(1) authorized plaintiff to seek "a default . . . as in other civil actions."

With respect to the entry of defaults and default judgments in civil actions, MCR 2.603 contains in relevant part the following procedural requirements:

> (A) Entry of Default; Notice; Effect.
>
> (1) *If a party* against whom a judgment for affirmative relief is sought *has failed to plead or otherwise defend as provided by these rules*, and that fact is made to appear by affidavit or otherwise, *the clerk must enter the default of that party*.
>
> (2) *Notice that the default has been entered must be sent* to all parties who have appeared and *to the defaulted party*. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.

(…continued)

"Defendant-Garnishee Center, Inc., 801 Virginia Park, Detroit Michigan."

* * *

(B) Default Judgment.

(1) Notice of Request for Default Judgment.

(a) A party requesting a default judgment must give notice of the request to the defaulted party, if

(i) the party against whom the default judgment is sought has appeared in the action; . . .

* * *

(b) The notice required by this subrule must be served at least 7 days before entry of the requested default judgment.

* * *

(3) Default Judgment Entered by Court. . . . [T]he party entitled to a default judgment must file a motion that asks the court to enter the default judgment.

* * *

(4) Notice of Entry of Default Judgment. The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.

* * *

(D) Setting Aside Default or Default Judgment.

(1) *A motion to set aside a default or a default judgment*, except when grounded on lack of jurisdiction over the defendant, *shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed*.

(2) Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the default, and default judgment if one has been entered, may be set aside only if the motion is filed

(a) before entry of a default judgment, or

(b) if a default judgment has been entered, within 21 days after the default judgment was entered.

(3) In addition, the court may set aside a default and a default judgment in accordance with MCR 2.612. . . . [Emphasis added.]

"The good cause requirement of MCR 2.603(D)(1) may be satisfied by demonstrating a procedural irregularity or defect or a reasonable excuse for failing to comply with the requirements that led to the default judgment." *ISB Sales Co, supra*. "[I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent a manifest injustice." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233-234; 600 NW2d 638 (1999).

We initially address plaintiff's repeated suggestion on appeal that the default judgment against CMHC must remain undisturbed because CMHC never filed a motion to set aside the default judgment, but only filed a motion for rehearing of the court's ruling. On April 8, 2004, CMHC filed a "Motion for rehearing," together with a brief in support, that urged the circuit court "to grant a rehearing of its [March 2004] Order entering a default judgment." But CMHC's brief went on to set forth various bases for the circuit court to vacate or set aside the default judgment, including that the court neither entered a default against CMHC nor gave CMHC notice that a default was entered, and that CMHC substantially complied with its garnishment disclosure obligation. On May 7, 2004, plaintiff filed a "brief in opposition to . . . [CMHC's] motion for rehearing," in which plaintiff urged the court to uphold the default judgment because CMHC failed to timely file its garnishment disclosure, and plaintiff had complied with the court rule requirements regarding defaults and default judgments.

Although CMHC entitled its motion seeking to vacate or set aside the default judgment as a "motion for rehearing," this Court has long recognized that a party's mislabeling of a motion does not foreclose proper review where the record otherwise permits it, *Johnson v Heite*, 243 Mich App 578, 584-585; 624 NW2d 738 (2000), and "it is clear that all of the parties understood the substance of the motion and were not prejudiced by the mislabeling." *Barrera v Bechtel Power Corp*, 144 Mich App 237, 240; 375 NW2d 362 (1985). Because the record substantiates that both CMHC and plaintiff treated the "motion for rehearing" as focusing on the question whether the circuit court should vacate or set aside the default judgment, and neither party suffered confusion by the mislabeling, we will treat CMHC's motion as one to set aside the default judgment.

Regarding the propriety of the default judgment against CMHC, we find that CMHC behaved in a manner warranting entry of a default by "fail[ing] to plead *or* otherwise defend as provided by these rules." MCR 2.603(A)(1) (emphasis added). As already mentioned, CMHC acknowledged its failure to timely file the garnishment disclosure, as required by MCR 3.101(H). Shortly after receiving plaintiff's writ of garnishment in December 2003, the CEO of Community Health & Social Services Center informally contacted the office of plaintiff's counsel to provide information, including: (1) that Community Health & Social Services Center never entered any agreements with Dr. Dass or Renaissance Hospital; and (2) identifications of parties who had entered lease agreements with Dr. Dass and Renaissance Hospital. These informal contacts, however, plainly fail to satisfy the requirement that CMHC file its garnishee disclosure within fourteen days. MCR 3.101(H). Because CMHC admittedly failed to timely plead in accordance with the court rules governing garnishment proceedings, plaintiff properly applied for entry of a default against CMHC. MCR 2.603(A)(1).

The next inquiry focuses on whether plaintiff adhered to the procedural requirements governing entry of a default and default judgment against CMHC. Our review of the record reflects that CMHC had good cause, in the form of a procedural irregularity, to support setting

aside the default judgment. The court rules plainly delineate that before securing a *default judgment* against a defendant who fails to plead or defend, a plaintiff first must obtain a *default* against the defendant. MCR 2.603(A), (B). The instant record does not substantiate that before obtaining the default judgment against CMHC, plaintiff complied with the court rules regarding entry of a default.

On February 5, 2004, plaintiff filed in the circuit court a form entitled "Default; application, entry, affidavit," together with a motion for entry of a default judgment, which plaintiff mailed to CMHC on February 3, 2004. The default form identified CMHC as the party in default, and briefly indicated that "[I]n accordance with court rule, I request the clerk to enter the default of the party named above for failure to plead or otherwise defend as provided by law." No signature appeared on the "Applicant/Attorney signature" line immediately below this declaration, and the form as filed contained no date or signature of the court clerk entering the default. Because neither the default form nor the remaining circuit court record contains any indication that the court clerk ever entered a default against CMHC, plaintiff failed to comply with the requirement within MCR 2.603(A)(1) that, if a failure to defend is established, "the clerk must enter the default of that party," and MCR 2.603(B)(1) requiring that "[n]otice that the default has been entered must be sent . . . to the defaulted party." Plaintiff's failure to obtain a default against CMHC, and consequently his failure to provide CMHC with notice that the court clerk properly entered a default against it, constitutes a procedural irregularity amounting to good cause for setting aside a default judgment. *Gavulic v Boyer*, 195 Mich App 20, 25-26; 489 NW2d 124 (1992), overruled on other grounds in *Allied Electric Supply Co, Inc v Tenaglia*, 461 Mich 285, 288-289; 602 NW2d 572 (1999) (holding that a failure to notify a party of an entry of a default, in violation of MCR 2.603(A)(2), suffices to show a substantial defect in the proceedings); see also *Bradley v Fulgham*, 200 Mich App 156, 158-159; 503 NW2d 714 (1993), citing *Gavulic*, *supra*.

With respect to the meritorious defense element, CMHC attached to its motion seeking to vacate the default judgment an affidavit by Ricardo Guzman, the CEO of Community Health & Social Services Center. In the affidavit, Guzman averred that Community Health & Social Services was not a party to any lease agreement with Renaissance Hospital, was not otherwise indebted to Renaissance Hospital, and did "not hold any property of [Renaissance Hospital]."[3] Because Guzman's affidavit satisfies MCR 2.603(D)(1) and establishes that Community Health & Social Services owed Renaissance Hospital no debt garnishable under MCR 3.101(G), the facts set forth in the affidavit, if proven, would establish an absolute defense to the writ of garnishment directed to CMHC.[4] *Albro Leasing, Inc v Sylvester*, 40 Mich App 227, 229; 198

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[3] The Guzman affidavit attached to CMHC's April 2004 brief in support of its motion to set aside the default judgment did not bear a notary's stamp or signature. On June 11, 2004, CMHC filed a brief in support of its emergency motion for a stay without bond, to which CMHC appended an expanded and notarized affidavit of Guzman, which reiterated that Community Health & Social Services owed Renaissance Hospital no debt.

[4] The June 10, 2004 affidavit of Guzman explains as follows the distinction between Community Health & Social Services and CMHC:

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NW2d 437 (1972) (explaining that the "[g]arnishee defendant has without doubt satisfied the 'meritorious defense' requirement," given that the "[p]laintiff does not dispute the contention that . . . the garnishee defendant owed nothing to the principal defendant").

Because the record demonstrates both good cause and a meritorious defense in support of setting aside the default judgment entered against CMHC, we conclude that the circuit court abused its discretion by denying CMHC's motion to vacate the default judgment. In light of our conclusion, we need not address CMHC's further appellate arguments.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper

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2. Community Health and Social Services Center, Inc. is a tax exempt charitable 501(c)(3) nonprofit corporation that operates three primary care health clinics in the City of Detroit to serve the indigent and uninsured population of . . . Detroit and Wayne County.

3. One of those clinics is CHASS MidTown Center [garnishee defendant CMHC], located at 801 Virginia Park in the City of Detroit.

4. CHASS MidTown Center is simply the name of the clinic; CHASS MidTown Center or CHASS MidTown Health Center, Inc. is not a legal entity and does not own any assets.

* * *

10. Community Health and Social Services Center, Inc. uses space for the CHASS MidTown Center at 801 Virginia Park in Detroit, pursuant to agreement with the lessee, Henry Ford Health System.